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Executive Summary

Due to their 'worker' status exclusion and the removal of the 2008 au-pairs visa, there is currently no guidance regarding au-pair working hours, wages, and working conditions.

This policy brief intends to explore these key gaps within the labour law framework which results in the exploitation of au-pairs. This reflects on the difficulties in attaining labour justice as an informal worker, as well as touches on gender-based discriminations that exist alongside the non-recognition of family workers as formal workers.

The policy recommendations will seek to alleviate the legal precarity of au-pairs and provide them access to key labour law legislation and redress for mistreatment.

Towards Improving the Rights of Au- Pairs in the UK

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Introduction

What is an Au-Pair?

An au-pair is a young person from a foreign country who lives with a host family. They help with light childcare and housework in exchange for a small stipend, accommodation, meals, and the opportunity for cultural immersion [1].

Current Au-Pair Legal Status

Before 2008, the au-pair visa scheme regulated au-pairing. However, the UK government deregulated au-pairing post-2008, eliminating the visa and associated guidance on working hours, pay, and living conditions [2].

According to 2014 guidance [3], au-pairs are not classified as workers under Section 230(3) of the Employment Rights Act 1996 [4], but may constitute 'family workers' [5]. Consequently, they are exempt from the National Minimum Wage (NMW) [6] and protections under Working Time Regulations (WTR) (1998) [7] and the Health and Safety at Work etc. Act (HSWA) (1974) [8].

These exemptions are intended to promote affordable hosting of au-pairs for cultural exchange programs. However, deregulation inadvertently created a loophole allowing employers to exploit live-in workers, undermining au-pairs' rights and hindering their ability to redress labour injustices [9].



Key Features of an Au-Pair



- Exchanging cultural education
- Reasonable pocket money
- Assist with light housework and childcare
- Attending English language classes in spare time. [10]

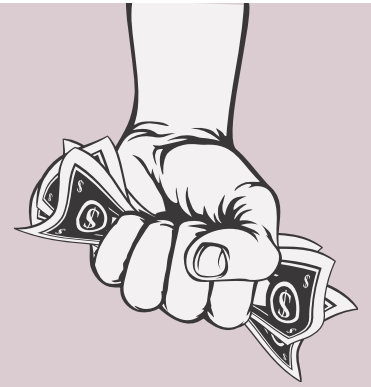


"Au-pairs currently have **no protection in terms of working hours, pay and living conditions**. They are only affordable because au-pairing is not recognised as work, while **poor conditions are justified through discourses of cultural exchange and adventure**." [11]



1. Gov.uk 'Employing Someone in Your Home Au Pairs' <<https://www.gov.uk/au-pairs-employment-law/au-pairs>> accessed 6 March 2024
2. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission' (minimumwage.blog.gov.uk13 December 2021) <<https://minimumwage.blog.gov.uk/2021/12/13/not-so-equal-is-excluding-au-pairs-from-the-minimum-wage-still-the-right-thing-to-do/>> accessed 12 March 2024
3. Gov.uk 'Employing Someone in Your Home Au Pairs' <<https://www.gov.uk/au-pairs-employment-law/au-pairs>> accessed 6 March 2024
4. Employment Rights Act 1996 s 230(3)
5. 'NMWM05180 - Entitlement to National Minimum Wage: Living as Part of the Family - HMRC Internal Manual - GOV.UK' (www.gov.uk16 April 2016) <<https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm05180>> accessed 09 March 2024
6. National Minimum Wage Act 1988
7. Working Time Regulations 1998
8. Health and Safety at Work Act 1974
9. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission'
10. Gov.uk 'Employing Someone in Your Home Au Pairs' <<https://www.gov.uk/au-pairs-employment-law/au-pairs>> accessed 6 March 2024
11. Rosie Cox, Dr Nicole Busch 'Au Pairing after the au pair scheme?' (Birkbeck)

Issues with the Rights of Au-Pairs



1 Minimum Wage

Current Legal Framework

Au-pairs are designated as 'family workers', and thus are not entitled to receive the NMW outlined in regulations 57(1) and 57(3) of the NMW Regulations (2015) [12]. Instead, the government recommends that au-pairs receive £90 weekly as pocket money. [13]

Issues

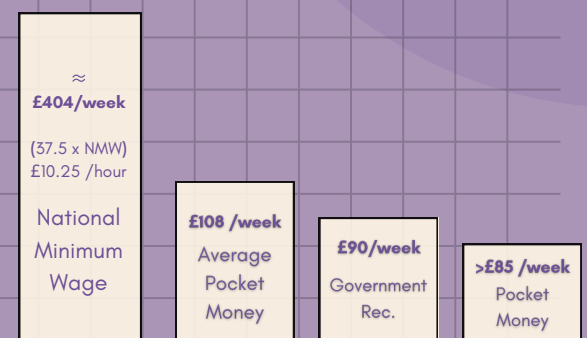
In the absence of wage regulations, there have been reports of instances where au-pairs are not remunerated at all, along with concerns regarding payments that do not accurately reflect the hours worked [14].

Consequences

The exemption cultivated an expectation that au-pairs should not be entitled to minimum wage, thereby nurturing a situation where they are perceived as cheap live-in caregivers and housekeepers [15].

A 2020 case of *Ms K Puthenveetil v Mr S Alexander and Ms R George (the Puthenveetil case)* [16], the Employment Tribunal found the exemption **indirectly discriminatory** as family workers, primarily female, were disproportionately affected. The Low Pay Commission's (LPC) revelation that 90% of those impacted were female affirmed this [17].

Key Au-Pairing Statistics [18]



NOTE: Following the *Puthenveetil* case, the LPC recommended removing Regulation 57(3) of the MWR 2015. This is to be repealed by April 1, 2024 [19]. However, due to insufficient support from government institutions and au-pair agencies post-2008 visa removal, enforcement of this repeal may be lacking [20]

12. 'NMWM05180 - Entitlement to National Minimum Wage: Living as Part of the Family - HMRC Internal Manual - GOV.UK' (www.gov.uk16 April 2016) <<https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm05180>> accessed 09 March 2024
13. Gov.uk 'Employing Someone in Your Home Au Pairs' <<https://www.gov.uk/au-pairs-employment-law/au-pairs>> accessed 6 March 2024
14. Birkbeck, University of London, 'Au Pairing Briefing' <<https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf>> accessed 6 March 2024.
15. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission'
16. *Ms K Puthenveetil v Mr S Alexander and Ms R George*: 2361118/2013
17. Clark S, 'Not so Equal: National Minimum Wage Exemption to Be Removed' (Reading solicitors, corporate, property and family advice | Field Seymour Parkes 25 October 2023) <<https://www.fsp-law.com/not-so-equal-national-minimum-wage-exemption-to-be-removed/>> accessed 09 March 2024
18. Birkbeck, University of London, 'Au Pairing Briefing' <<https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf>> accessed 6 March 2024
19. Clark S, 'Not so Equal: National Minimum Wage Exemption to Be Removed' (Reading solicitors, corporate, property and family advice | Field Seymour Parkes 25 October 2023)
20. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission'

2 Working Time

Current Legal Framework

Au-pairs are currently excluded from the protections of the WTR 1998 [21]. However, the government recommendations set a limit of approximately 30 hours per week, involving 'light housework' duties [22].

Key Au-Pairing Statistics

38.7 is the average hours of a working week, ranging between 20-70 hours [25].

Issues

The guidance fails to provide clarity on 'light housework,' leaving it open to exploitation by host families. The absence of regulations concerning working hours has led to instances where some au-pairs are required to work up to 70 hours per week [23].

Consequences

Exclusion from WTR 1998 protections pressures au-pairs to work beyond agreed hours. They are perceived as being constantly available and feel compelled to comply due to the inextricable workplace-accommodation link. These prolonged work hours are frequently uncompensated and undermine the essence of the au-pair program by detracting from cultural exchange opportunities [24].

21. Working Time Regulations 1998

22. 'Au Pair Working Hours by Country - AuPairWorld' (www.aupairworld.com)

<<https://www.aupairworld.com/en/wiki/working-hours#:~:text=According%20to%20our%20basic%20idea>> accessed 07 March 2024

23. Birkbeck, University of London, 'Au Pairing Briefing' <<https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf>> accessed 6 March 2024.

24. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission'

25. Birkbeck, University of London, 'Au Pairing Briefing' <[25. https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf](https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf)> accessed 6 March 2024.

3 Working Conditions

Current Legal Framework

Owing to their non-recognition as workers, au-pairs are devoid of HSWA 1974 protections [26]. Furthermore, notwithstanding the efforts of au-pair agencies to uphold equitable treatment following the elimination of the 2008 visa, there has been a notable surge in the placement of au-pairs outside agencies [27].

Issues

Due to the lack of regulatory oversight and the increasing trend of sourcing au-pairs outside agencies, they face vulnerability, relying heavily on host families with limited recourse for mistreatment [28]. This is compounded by au-pairs often being young women from minority backgrounds, making them more susceptible to reported forms of abuse, including physical and verbal abuse, as well as sexual harassment [29].



Consequences

Many au-pairs are working in conditions outside the guidance provided by the UK Government in 2014 and the British Au-pairs Agencies Association (BAAPA [30]). Additionally, HM Revenue & Customs (HMRC) report challenges in investigating alleged abuse due to insufficient documented evidence of work hours or pay [31].

NOTE: In the Netherlands, Germany, and Ireland, immigration authorities, NGOs, and agencies offer hotline support and shelters for au-pairs in distress [32].

26. Health & Safety at Work Act 1974

27. Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission'

28. Birkbeck, University of London, 'Au Pairing Briefing' <<https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf>> accessed 6 March 2024.

29. Tim Stokes, 'Sophie Lionnet: the 'toxic' couple who murdered their au pair' (BBC, 24 May 2018) <<https://www.bbc.co.uk/news/uk-england-london-44120874>> accessed 12 March 2024

30. Birkbeck, University of London, 'Au Pairing Briefing' <<https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf>> accessed 6 March 2024.

31. Low Pay Commission, 'National Minimum Wage: Low Pay Commission Report' (December 2021) <https://assets.publishing.service.gov.uk/media/61b0e2c6d3bf7f054e769514/LPC_Report_2021_web_version.pdf> accessed 12 March 2024

32. European Parliament, 'Abused Domestic Workers in Europe: The case of au pairs' (2011) <<https://www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf>> accessed 9 March 2024.



Policy Recommendations

1

Introducing an **Au-Pair Act** which clearly defines the au-pair role and delineates their household responsibilities and legal entitlements whilst emphasising cultural exchange. This would involve enforcing the NMW requirement, specifying a set number of working hours per week with mandated breaks, a full day off, and annual leave, and allowing au-pairs to change employers without visa jeopardy to combat mistreatment.

2

Re-introduce an **au-pair visa** to shift au-pair placements away from the informal labour market via online platforms to ensure that all au-pair placements are arranged via accredited agencies and all au-pair host families are registered.

3

Create **independent public labour inspection authorities** to oversee au-pair activities, handle complaints, and conduct regular home visits. Moreover, supporting NGOs that offer information, support services, and shelter access for au-pairs in distress.

4

Establish a **government-run accreditation scheme** to enforce provisions of proposed au-pair Act. This may secure agency oversight, fulfilment of au-pair host registration, and enforcement of other crucial statutory protections enshrined within the Act.



Works Cited

Websites

'Au Pair Working Hours by Country - AuPairWorld' (www.aupairworld.com)
<https://www.aupairworld.com/en/wiki/working-hours#:~:text=According to our basic idea> accessed 07 March 2024

Clark S, 'Not so Equal: National Minimum Wage Exemption to Be Removed' (Reading solicitors, corporate, property and family advice | Field Seymour Parkes 25 October 2023) <https://www.fsp-law.com/not-so-equal-national-minimum-wage-exemption-to-be-removed/> accessed 09 March 2024

Gov.uk 'Employing Someone in Your Home Au Pairs ' <https://www.gov.uk/au-pairs-employment-law/au-pairs> accessed 6 March 2024

Hill E, 'Not so Equal: Is Excluding Au Pairs from the Minimum Wage Still the Right Thing to Do? - Low Pay Commission' (minimumwage.blog.gov.uk 13 December 2021)
<https://minimumwage.blog.gov.uk/2021/12/13/not-so-equal-is-excluding-au-pairs-from-the-minimum-wage-still-the-right-thing-to-do/> accessed 12 March 2024

'NMWM05180 - Entitlement to National Minimum Wage: Living as Part of the Family - HMRC Internal Manual - GOV.UK' (www.gov.uk 16 April 2016) <https://www.gov.uk/hmrc-internal-manuals/national-minimum-wage-manual/nmwm05180> accessed 09 March 2024

Stokes T, 'Sophie Lionnet: the 'toxic' couple who murdered their au pair' (BBC, 24 May 2018)
<<https://www.bbc.co.uk/news/uk-england-london-44120874>> accessed 12 March 2024

Academic Articles

Birkbeck, University of London, 'Au Pairing Briefing' <https://www.bbk.ac.uk/downloads/news/au-pairing-briefing.pdf> accessed 6 March 2024

Cox R, Dr Busch N, 'Au Pairing after the au pair scheme?' (Birkbeck)

European Parliament, 'Abused Domestic Workers in Europe: The case of au pairs' (2011) <https://www.europarl.europa.eu/document/activities/cont/201110/20111020ATT29946/20111020ATT29946EN.pdf> accessed 9 March 2024.

Low Pay Commission, 'National Minimum Wage: Low Pay Commission Report' (December 2021)
<https://assets.publishing.service.gov.uk/media/61b0e2c6d3bf7f054e769514/LPC_Report_2021_web_version.pdf> accessed 12 March 2024

Statutory Provisions

Employment Rights Act 1996 s 230(3)

Health and Safety at Work Act 1974

National Minimum Wage Act 1998

Working Time Regulations 1998

Cases

Ms K Puthenveetil v Mr S Alexander and Ms R George: 2361118/2013